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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 26th December, 1983/Pausa 5, 1905 (Saka)

The following Act of Parliament received the assent of the President on the 25th December, 1983 and is here by published for general information:—

THE ILLEGAL MIGRANTS (DETERMINATION BY TRIBUNALS) ACT, 1983

No. 39 OF 1983

[25*th December*, 1983.]

An Act to provide for the establishment of Tribunals for the determination, in a fair manner, of the question whether a person is an illegal migrant to enable the Central Government to expel illegal migrants from India and for matters connected therewith or incidental thereto.

WHEREAS a good number of the foreigners who migrated into India across the borders of the eastern and north-eastern regions of the country on and after the 25th day of March, 1971, have, by taking advantage of the circumstances of such migration and their ethnic similarities and other connections with the people of India and without having in their possession any lawful authority so to do, illegally remained in India;

AND WHEREAS the continuance of such foreigners in India is detrimental to the interests of the public of India;

AND WHEREAS on account of the number of such foreigners and the manner in which such foreigners have clandestinely been trying to pass off as citizens of India and all other relevant circumstances, it is

necessary for the protection of the citizens of India to make special provisions for the detection of such foreigners in Assam and also in any other part of India in which such foreigners may be found to have remained illegally;

BE it enacted by Parliament in the Thirty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Act may be called the Illegal Migrants (Determination by Tribunals) Act, 1983.

(*2*) It extends to the whole of India.

(*3*) It shall be deemed to have come into force in the State of Assam on the 15th day of October, 1983 and in any other State on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States and references in this Act to the commencement of this Act shall be construed in relation to any State as references to the date of commencement of this Act in such State.

Application.

2. Nothing in this Act shall apply to or in relation to—

(*a*) any person who was in any State and who had been expelled from that State or India before the commencement of this Act in that State or in relation to whose expulsion from such State or India any order made before such commencement under any other law is in force;

(*b*) any person detected as a foreigner at the time of his entry across any border of India;

(*c*) any foreigner who, having entered into India under a valid passport or travel document, continued to remain therein after the expiry of the period for which he was authorised to remain in India under such passport or travel document.

Definitions and construction of references.

3. (*1*) In this Act, unless the context otherwise requires,—

(*a*) "Appellate Tribunal" means an Appellate Tribunal established by the Central Government under sub-section (*1*) of section 15;

(*b*) "foreigner" has the same meaning as in the Foreigners Act, 1946; 31 of 1946.

(*c*) "illegal migrant" means a person in respect of whom each of the following conditions is satisfied, namely:—

(*i*) he nas entered into India on or after the 25th day of March, 1971,

(*ii*) he is a foreigner,

(*iii*) he has entered into India without being in possession of a valid passport or other travel document or any other lawful authority in that behalf;

(*d*) "notification" means a notification published in the Official Gazette;

(*e*) "prescribed" means prescribed by rules made under this Act;

(*f*) "Tribunal" means a Tribunal established by the Central Government under sub section (*1*) of section 5.

(2) Any reference in this Act to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

Overriding effect of the Act.

4. (*1*) The provisions of this Act or of any rule or order made thereunder shall have effect notwithstanding anything contained in the Passport (Entry into India) Act, 1920 or the Foreigners Act, 1946 or the Immigrants (Expulsion from Assam) Act, 1950 or the Passports Act, 1967 or any rule or order made under any of the said Acts and in force for the time being.

34 of 1920.
31 of 1946.
10 of 1950.
15 of 1967

(2) In particular and without prejudice to the generality of the provisions of sub-section (*1*), nothing in the proviso to section 2 of the Immigrants (Expulsion from Assam) Act, 1950 shall apply to or in relation to an illegal migrant as defined in clause (c) of sub-section (*1*) of section 3.

10 of 1950.

CHAPTER II

ESTABLISHMENT OF TRIBUNALS

Establishment of Illegal Migrants (Determination) Tribunals.

5. (*1*) The Central Government may, by notification, establish, for the purposes of this Act, as many Illegal Migrants (Determination) Tribunals as it may deem necessary and specify the principal place of sitting of, and the territorial limits within which, each such Tribunal shall exercise its jurisdiction.

(2) No person shall be appointed as a member of any such Tribunal unless he is or has been a District Judge or an Additional District Judge in any State.

(3) Each Tribunal shall consist of three members.

(4) On the establishment of a Tribunal, the Central Government shall appoint one of the members thereof as the Chairman of such Tribunal.

(5) Each Tribunal shall sit in its principal place of sitting and in such other place or places as its Chairman may, from time to time, appoint.

Filling of vacancies.

6. If, for any reason, any vacancy occurs in the office of the Chairman or any other member of a Tribunal, the Central Government may fill the vacancy by appointing any person who fulfils the qualifications specified in sub-section (2) of section 5 as the Chairman, or, as the case may be member of such Tribunal

Staff of the Tribunals.

7. The Central Government shall make available to every Tribunal such staff as may be necessary for the discharge of its functions under this Act.

References or applications to Tribunals.

8. (*1*) If any question arises as to whether any person is or is not an illegal migrant, the Central Government may, whether such question has arisen on a representation made by such person against any order under the Foreigners Act, 1946 requiring him not to remain in India or to any other effect or has arisen in any other manner whatsoever, refer such question to a Tribunal for decision. 31 of 1946.

(*2*) Without prejudice to the power conferred on the Central Government by sub-section (*1*), any person may make an application to the Tribunal, for its decision as to whether the person whose name and other particulars are given in the application, is or is not an illegal migrant:

Provided that no such application shall be entertained by the Tribunal unless the person in relation to whom the application is made is found, or resides, at a place within three kilometres from the place of residence of the applicant.

(*3*) Every application made under sub-section (*2*) shall be made in such form and in such manner as may be prescribed and shall be accompanied by affidavits sworn by not less than two persons residing within three kilometres of the area in which the person referred to in the application is found, or residing, corroborating the averments made in the application, and shall also be accompanied by such fee, being not less than twenty-five, and not more than one hundred, rupees, as may be prescribed.

(*4*) Every reference under sub-section (*1*), and every application under sub-section (*2*), shall be made to the Tribunal within the territorial limits of whose jurisdiction the place of residence of the person named in such reference or application, as the case may be, is situated:

Provided that where the person named in such reference or application has no place of residence, the reference or application, as the case may be, shall be made to the Tribunal within the territorial limits of whose jurisdiction such person is found.

Powers of the Tribunal.

9. Every Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— 5 of 1908.

(*a*) summoning and enforcing the attendance of witnesses and examining them on oath;

(*b*) discovery and production of any document;

(*c*) reception of evidence on affidavits;

(*d*) requisitioning of public records from any court or office;

(*e*) issuing of any commission for the examination of witnesses.

Procedures with respect to references under sub-section (1) of section 8.

10. On receipt of a reference under sub-section (*1*) of section 8, the Tribunal shall serve on the person named in such reference, a notice, accompanied by a copy of such reference, calling upon him to make, within a period of thirty days from the date of receipt of such notice, such representation with regard to the averments made in the reference, and to produce such evidence as he may think fit in support of his defence:

Provided that if the Tribunal is satisfied that the person aforesaid was prevented by sufficient cause from making his representation and from producing evidence in support of his defence within the said period of thirty days, it may permit him to make his representation and to produce evidence in support of his defence, within such further period, not exceeding thirty days, as it may, by order, specify.

Procedure with respect to applications under sub-section (2) of section 8.

11. (*1*) On receipt of an application under sub-section (2) of section 8, the Tribunal shall issue a notice, accompanied by a copy of the application, to the prescribed authority calling upon it to furnish, after making such inquiry as that authority may deem fit, a report to the Tribunal with regard to the averments made in the application.

(*2*) If, on a consideration of the report made by the prescribed authority, the Tribunal is satisfied that—

(*a*) the person named in the application is not an illegal migrant or that the application is frivolous or vexatious, or has not been made in good faith, the Tribunal shall, after giving the applicant an opportunity to be heard, reject the application;

(*b*) there are reasonable grounds to believe that the person named in the application is an illegal migrant, the Tribunal shall issue a notice accompanied by a copy of the application, to the person named in the application, calling upon him to make, within thirty days from the date of receipt of the notice, such representation with regard to the averments made in the application and to produce such evidence as he may think fit in support of his defence:

Provided that if the Tribunal is satisfied that the person aforesaid was prevented by sufficient cause from making his representation and from producing evidence in support of his defence within the said period of thirty days, it may permit him to make his representation and to produce evidence in support of his defence, within such further period, not exceeding thirty days, as it may, by order, specify.

Determination of the question as to whether a person is an illegal migrant.

12. (*1*) The Tribunal to which a reference has been made under section 8, or to which an application has been made under that section, shall, after taking such evidence as may be adduced before it and after making such inquiry as it may think fit and after hearing such persons as it may deem appropriate, by order, decide the question as to whether the person named in such reference or application, as the case may be, is or is not an illegal migrant:

Provided that where for the determination of such question in any case the decision on any issue renders any decision on any other issue or issues unnecessary, the Tribunal may not decide such other issue or issues.

(*2*) Where the members of the Tribunal differ in their opinion on any point, the decision on such point shall be according to the opinion of the majority of such members.

(*3*) The Tribunal shall send a copy of every order passed by it to the prescribed authority and to the parties to the reference, or the application, as the case may be.

(4) Every order passed under sub-section (1) shall, subject to the decision of the Appellate Tribunal, be final and shall not be called in question in any court.

Reference and application to be disposed of within six months.

13. Every reference made to a Tribunal under section 8 or application made to a Tribunal under that section shall be inquired into as expeditiously as possible and every endeavour shall be made to conclude such inquiry within a period of six months from the date of the service, on the person concerned, of a copy of such reference or application.

Appeal.

14. The Central Government, or any person, named in a reference or an application under section 8, or any applicant under sub-section (2) of that section may, if it or he is not satisfied with any order made by a Tribunal under section 12, prefer an appeal to the Appellate Tribunal against such order.

Appellate Tribunal.

15. (1) The Central Government may, by notification, establish for each State in which this Act is in force an Appellate Tribunal to be known as the Illegal Migrants (Determination) Appellate Tribunal for deciding appeals preferred under section 14 against orders made by Tribunals in the State and specify the principal place of sitting of such Appellate Tribunal.

(2) No person shall be appointed as a member of an Appellate Tribunal unless he is or has been a Judge of a High Court.

(3) An Appellate Tribunal shall consist of as many members, not being less than three and more than six, as the Central Government may think fit.

(4) The Central Government shall appoint one of the members of an Appellate Tribunal to be the President thereof.

(5) An Appellate Tribunal shall sit in its principal place of sitting or any such other place or places as the President thereof may, from time to time, appoint.

(6) The powers and functions of an Appellate Tribunal may be exercised and discharged by benches constituted by the President thereof from amongst the members thereof and each bench shall consist of not less than two members.

(7) The Central Government shall make available to every Appellate Tribunal such staff as may be necessary for the discharge of its functions under this Act.

(8) Every memorandum of appeal to an Appellate Tribunal shall be made in such form and in such manner as may be prescribed, and, in the case of an appeal preferred by an applicant under sub-section (2) of section 8, shall also be accompanied by such fee, not being less than twenty-five and more than one hundred rupees, as may be prescribed.

(9) Every appeal shall be preferred within thirty days from the date on which the order sought to be appealed against was communicated to the appellant:

Provided that the Appellate Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period, admit an appeal after the expiry of the aforesaid period of thirty days.

(10) Every Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— 5 of 1908.

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and production of any document;

(c) reception of evidence on affidavits;

(d) requisitioning of public records from any court or office;

(e) issuing of any commission for the examination of witnesses.

16. (1) The Appellate Tribunal may, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it may think fit, confirming, modifying or annulling the order appealed against or may remand the case to the Tribunal which had passed such order with such directions to that Tribunal as the Appellate Tribunal may think fit, for fresh determination after taking additional evidence, if necessary. Order of the Appellate Tribunal.

(2) Where an appeal had been heard by the Appellate Tribunal and the members thereof differ in their opinion on any point, the decision on such point shall, where there is a majority, be according to the opinion of such majority, and where there is no majority and the members are equally divided in their opinion, they shall draw up a statement of the facts of the case and the point or points on which they differ in their opinion and make a reference of the point or points or of the appeal, as the case may be, to the President of such Tribunal, and on receipt of such reference, the President of the Tribunal shall arrange for the hearing of such point or points, or the appeal, by one or more of the members of the Appellate Tribunal, and such point or points, or the appeal, as the case may be, shall be decided according to the opinion of the majority of the members of the Appellate Tribunal, who have heard the appeal, including those who had first heard it.

(3) The Appellate Tribunal shall send a copy of every order passed by it under sub-section (1) to the parties to the appeal and to the Tribunal concerned.

(4) Subject to the provisions of section 17, every order passed under sub-section (1), other than an order remanding the case, shall be final and no order passed under that sub-section shall be called in question in any court.

Revision.

17. The High Court may call for the record of any case which has been decided by the Appellate Tribunal situate within its local jurisdiction, and if such Appellate Tribunal appears—

(*a*) to have exercised a jurisdiction not vested in it by law, or

(*b*) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made or any order deciding an issue in the course of a proceeding with respect to an appeal, except where—

(*i*) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the proceeding, or

(*ii*) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

Explanation.—In this section, the expression "any case which has been decided" includes any order made or any order deciding an issue in the course of a proceeding with respect to any appeal.

CHAPTER III

PROVISIONS APPLICABLE TO ALL TRIBUNALS

Procedure.

18. Subject to the provisions of this Act and the rules made thereunder, every Tribunal and every Appellate Tribunal shall have the power to regulate its own procedure in all matters arising out of the exercise of its powers or for the discharge of its functions.

Proceeding before every Tribunal to be judicial proceeding for certain purposes.

19. Every proceeding before a Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code; and every such Tribunal or Appellate Tribunal, as the case may be, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. 45 of 1860. 2 of 1974.

CHAPTER IV

ENFORCEMENT OF THE ORDERS MADE BY THE TRIBUNALS

Expulsion of illegal migrant.

20. Where a person has been determined by a Tribunal, or, as the case may be, by the Appellate Tribunal, to be an illegal migrant, the Central Government shall, by order served on such person, direct such person to remove himself from India within such time and by such route as may be specified in the order and may give such further directions in regard to his removal from India as it may consider necessary or expedient.

CHAPTER V

MISCELLANEOUS

Delegation of powers.

21. The Central Government may, by notification, direct that the powers and duties conferred or imposed on it by this Act, other than the powers conferred by section 28, and the powers conferred by this section, may, subject to such conditions as may be specified in the notification, be exercised or discharged also by—

(*a*) any officer subordinate to the Central Government;

(*b*) any State Government or any officer subordinate to that Government.

Power to give effect to the orders, etc.

22. Any authority empowered by or in pursuance of the provisions of this Act to exercise any power, may, in addition to any other action expressly provided for in this Act, take, or cause to be taken, such steps, and use, or cause to be used, such force, as may in its opinion be reasonably necessary for the effective exercise of such power.

Bar of jurisdiction of civil courts.

23. Where a Tribunal or Appellate Tribunal has been established for any area for the purpose of determining whether a person is or is not an illegal migrant, no civil court shall have jurisdiction to entertain any question relating to that matter in that area and no injunction or any other order in respect of any action taken by, or before, the Tribunal or Appellate Tribunal in respect of that matter shall be granted or made by any civil court.

Transitory provision.

24. Where in any suit or other legal proceeding pending, whether in a civil court or in any Tribunal established under any other law for the time being in force, immediately before the commencement of this Act, a question arises as to whether a person is or is not an illegal migrant, such court or Tribunal shall, without deciding such question, make an order transferring such suit or other legal proceeding to the Tribunal under this Act within the territorial limits of whose jurisdiction such court or other Tribunal is situate and on such transfer such question shall be dealt with by such Tribunal in accordance with the provisions of this Act.

Penalties.

25. Any person who,—

(*a*) contravenes or attempts to contravenue, or abets the contravention of, any order made under section 20; or

(*b*) fails to comply with any direction given by any such order; or

(*c*) harbours any person who has contravened any order made under section 20 or has failed to comply with any direction given by any such order,

shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

Protection of action taken in good faith.

26. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Power to remove difficulties.

27. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order to be published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(*2*) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to make rules.

28. (*1*) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(*a*) the form and the manner in which an application may be made and the fee which shall accompany such application, as required by sub-section (*3*) of section 8;

(*b*) the authority to be prescribed under section 11;

(*c*) the form and the manner in which an appeal to the Appellate Tribunal may be preferred and the fee which shall accompany such appeal, as required by sub-section (*8*) of section 15;

(*d*) any other matter which is required to be, or may be, prescribed.

(*3*) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal and saving.

29. (*1*) The Illegal Migrants (Determination by Tribunals) Ordi- 8 of 1983. nance, 1983, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

R. V. S. PERI SASTRI,
Secy. to the Govt. of India.

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